

White Collar MVPs: Gibson Dunn's Warin & Walden

By **Evan Weinberger**

Law360, New York (November 29, 2011) -- When Joseph Cassano, the former head of American International Group Inc.'s financial products division, was facing a flood of investigations from law enforcement officials probing the insurance giant's near-collapse, Gibson Dunn & Crutcher LLP partners Joe Warin and Jim Walden knew the best strategy for their client was an unconventional one: be proactive. That strategy helped Cassano avoid prosecution and earned them a spot on Law360's list of white collar MVPs.

"Our approach bucked the popular wisdom of defense lawyers, but was fundamentally based on our belief in our client's innocence," Warin said.

The investigation into Cassano's actions came as anger ranged from politicians, the media and the public over the \$182 million bailout of AIG due to the financial products division's losses on credit default swaps. The public wanted a scalp, and Cassano's seemed to be ripe for the cutting, Walden said.

Among other risks the ex-AIG head faced was legal fallout from statements he made during a 2007 AIG earnings call that he did not expect any economic losses from the company's massive credit default swap portfolio — losses that ultimately brought the insurer low and triggered a huge government bailout, Walden added.

But Walden and Warin discovered something when they talked over the situation with Cassano. They believed Cassano when he denied any wrongdoing related to AIG's losses, Walden said.

"Our view, having spent a lot of time with Joe Cassano was that we believed him," Walden said. "It's hard to speak to him and not realize that he's a data-driven guy, not your typical CEO, not your showy guy that is a member of 10 country clubs."

But the public perception of Cassano was not of a data-driven CEO, it was of a financial mad scientist who not only lost billions of dollars on bad bets, but was known for terrorizing his employees.

With the media and political storms swirling, Warin and Walden decided not to engage the public. Instead, they went to the federal prosecutors who were charged with looking into AIG's collapse, and Cassano's role in it.

“What made it complicated and unique was that as we were trying to wage a battle on the facts, the media was absolutely hell-bent on conveying every negative opinion you can think of on Joe,” Walden said.

The key to the strategy, Walden said, was to engage prosecutors early on in the process, so they could present evidence that would prove to investigators that Cassano did nothing illegal while in charge of AIG's financial products division.

That was particularly important because the prosecutors had already come up with a narrative for the case that painted Cassano as guilty, largely due to the public anger raging at their client, he added.

“We didn't attribute bad motives to that. We really believe that prosecutors are not political creatures and are open to persuasion,” Walden said.

Fortunately for Warin, Walden and Cassano, the prosecutors were willing to listen after their first meeting.

The Gibson Dunn team then had a chance to find exculpatory evidence that could prove Cassano's innocence and, over the course of several meetings, presented it, Walden said.

Based on their own investigation and the evidence provided by Warin and Walden, federal prosecutors decided in May 2010 against bringing any criminal or civil charges against Cassano.

Given the political environment, Walden said it was only natural for prosecutors to be searching for a villain. But good prosecutors, like the ones he and Warin encountered in their defense of Cassano, know when not to bring a case, he said.

“One of the dangers in those political and economic environments is that the wrong person gets labeled a villain,” Walden said.

Going to prosecutors prevented that stigma from affecting Cassano's case, he added.

“I think, because we felt as though it bucked the traditional wisdom, we believed that we would be able to put together a compelling case of factual innocence,” Walden said.

Freed from the millstone of potential litigation and prosecution, Cassano went public with his own take on AIG's widely publicized bailout.

Cassano told Congress in June 2010 that massive losses sustained by the global insurer from credit default obligations would have been far less damaging had the government not stepped in to unwind the trades.

There is still an open New York state investigation into Cassano, Warin noted, but given the decision not to prosecute at the federal level, the state case is viewed as dormant.

Since successfully defending Cassano, the two attorneys have worked a number of high-profile cases, but most of them are still pending, Walden said.

--Additional reporting by Pete Brush. Editing by Lindsay Naylor.